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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

PTOL-90A (Rev. 04/07)

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on <u>06 August 2007</u>.

2a)☒ This action is **FINAL**.   2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) <u>26-35,37,40-46 and 93</u> is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) <u>26-35,37,40-46 and 93</u> is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a)☐ All   b)☐ Some * c)☐ None of:

      1.☐ Certified copies of the priority documents have been received.

      2.☐ Certified copies of the priority documents have been received in Application No. _____.

      3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)

2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.

4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.

5) ☐ Notice of Informal Patent Application

6) ☐ Other: _____.

DETAILED ACTION

1.   The following is a Final Office action in response to communications received

08/06/2007. Claims 41-44 and 93 have been amended. Claims 26-35, 37, 40-46, and 93

are pending.

Response to Amendments

2.   Applicant's amendments to claim 93 is sufficient to overcome the claim

objections set forth in the previous office action.

3.   Applicant's amendments to claims 41-44 are sufficient to overcome the 35 USC

112, second paragraph, rejections set forth in the previous office action.

Claim Rejections - 35 USC § 103

4.   The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set
> forth in section 102 of this title, if the differences between the subject matter sought to be patented and
> the prior art are such that the subject matter as a whole would have been obvious at the time the
> invention was made to a person having ordinary skill in the art to which said subject matter pertains.
> Patentability shall not be negatived by the manner in which the invention was made.

5.   Claims 25-46 and 93 are rejected under 35 U.S.C. 103(a) as being unpatentable

over Landvater (U.S. 6,609,101) in view of Display Unlimited

(www.displayunlimited.com).

As per claim 93, Landvater teaches a computer implemented method of

simulating demand for and stocking of standard presentation fixture types used in retail

outlets having differing floor plans, including:

for use across selling locations, designating a plurality of display fixture setups,

the display fixture setups including a display fixture and a capacity for holding items and

independently storing instances of the display fixture setups to differentiate among the instances at a particular selling location (See figures 14 and 15, column 1, lines 40-50, column 2, lines 20-27, column 14, lines 25-65, column 15, lines 1-6 and 17-25, wherein profiles of display setups are stored in the system, the stored information including a display fixture and capacity (i.e. shelf with specific space), wherein each instance of a display configuration is stored in the database for planning purposes);

for the selling locations, recording in data structures the instances of display fixture setups that are present at the selling locations (See column 14, lines 25-45, wherein display configurations are stored in the database);

for items to be displayed, recording presentation dates during which the items are to be displayed in the named instances and presentation quantities (See figures 14 and 15, column 1, lines 40-50, column 2, lines 20-27, column 14, lines 25-65, column 15, lines 1-6 and 17-25, wherein the good has a time of display and quantities to be displayed);

for use across selling locations, recording in data structures time elements that are used collectively to represent the lead time for an order or other action to lead to display of the items at the selling locations (See column 8, lines 25-40, column 9, lines 15-25 and 55-column 10, line 20, column 14, lines 25-45 and line 64-column 15, line 6 and 17-25, wherein time information associated with the display is stored in the system database, as well as time-phased forecasts and actions, and lead times);

for the items at the selling locations, selecting a plurality of the time elements to represent the lead time (See column 8, lines 25-40, column 9, lines 15-25, column 17, line 60-column 18, line 2, which discloses lead time);

simulating sales of the items at the locations during a predetermined selling period

and the orders that would need to be placed to stock the display fixture setups and to

satisfy the simulated sales, using the selected time elements for the lead time and the

presentation dates and the presentation quantities (See column 8, lines 19-35, column 9,

lines 50-62, column 10, lines 1-2 and 30-55, column 12, lines 10-30 and 40-55, wherein

sales are forecasted and modeled for a selling period to determine inventory and safety

stock considerations, as well as replenishments, based on the expected sales. See also

column 14, line 59-column 15, line 25,);

reporting results of the simulating (See column 8, lines 25-40).

However, while Landvater discloses a number of shelf configurations, shelves

versus floor displays, and storing information concerning the shelves and displays in the

system, Landvater does not expressly disclose specific display fixture types or named

display fixture types present at locations.

Display Unlimited discloses different display fixture types and using these fixture

types to design layouts of stores in retail environments (See pages 2-3, page 4, section 1,

and page 5, section 1, which discloses fixture types and layouts of stores with multiple

elements).

Landvater discloses alternative treatments of presentation demand (i.e. different

shelf configurations) as well as different types of display (shelves and floor models).

Landvater stores information concerning these presentations and displays in the system.

Examiner points out that different fixtures types and the scheduling of different fixture

types for store resets and remodels are well-known in the retail industry. Further,

Landvater states that the shelf/display configurations are stored in the database in a way

that shelf-planning systems can be easily interfaced with aspects of the system. See column 14, lines 34-40. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to include data representing the fixture types of Display Unlimited in the data already stored by Landvater concerning displays and shelves in order to more accurately calculate the stock replenishments needed to maintain attractive displays by ensuring the capacity of the fixtures is accounted for. See column 14, lines 25-35 and 55-65 of Landvater.

As per claim 26, Landvater discloses designating whether or not a quantity of an item at the selling location should be allowed to fall below the presentation quantity between deliveries (See column 14, lines 25-65, column 15, lines 1-6 and 17-25, wherein a number is set for replenishment purposes so that an attractive display can be maintained).

As per claim 27, Landvater discloses wherein the time elements include delivery of the item from a stocking location (See figure 1, column 6, lines 45-67, column 8, lines 25-45, column 9, lines 1-25 and 55-67, column 13, lines 30-45 and 59-67, column 14, lines 25-65, which discloses a stocking location).

As per claim 28, Landvater teaches wherein the time elements include preparing the delivered item for sale (See column 3, lines 10-30, column 8, lines 25-45, column 9, lines 1-25 and 55-67,column 14, lines 25-65, which discloses setting up the display of the delivered good).

As per claim 29, Landvater disclosed wherein the time elements include time required to collect data, review action recommendations, process data, pick goods at a stocking location, and ship the item to the selling location (See column 3, lines 10-30,

column 7, lines 1-25, column 8, lines 25-45, column 9, lines 1-25 and 55-67, column 14, lines 25-65, column 16, lines 35-65). As per claim 30, Landvater wherein the time element further include periodic dates for actions necessary to make the item available at the plurality of selling locations (See figures 8 and 9, column 4, lines 20-40 and 54-66, column 10, column 11, lines 15-35, wherein time periods for forecasting are set in the system).

As per claim 31, Landvater discloses wherein the time elements include time of distributing the good from one or more first level stocking locations to a plurality of second level stocking locations (See figure 1, column 3, lines10-30, column 6, lines 45-67, column 7, lines 1-25, column 8, lines 25-45, column 9, lines 1-25 and 55-67, wherein the good is distributed among level 2 and 3 stocking locations using a time element).

As per claim 32, Landvater wherein the time elements include time for distributing the item from one or more first level stocking locations to a plurality of second level stocking locations (See figure 1, column 3, lines 10-30, column 6, lines 45-67, column 7, lines 1-25, column 8, lines 25-45, column 9, lines 1-25 and 55-67, wherein the good is distributed among level 2 and 3 stocking locations using a time element).

As per claim 33, Landvater teaches wherein the time elements include time for distributing the item from a supplier through one or more stocking locations to a plurality of selling locations (See figure 1, column 3, lines10-30, column 6, lines 45-67, column 7, lines 1-25, column 8, lines 25-45, column 9, lines 1-25 and 55-67, wherein the good is distributed from a supplier to the selling location using a time element).

As per claim 34, Landvater discloses wherein the time elements include time for distributing the item from a supplier through one or more stocking locations to a plurality

of selling locations (See figure 1, column 3, lines10-30, column 6, lines 45-67, column 7, lines 1-25, column 8, lines 25-45, column 9, lines 1-25 and 55-67, column 14, lines 25-65, wherein the good is distributed from a supplier to the selling location using a time element).

As per claim 35, Landvater discloses wherein the action includes distribution of the item from one or more stocking locations to a plurality of selling locations (See figure 1, column 6, lines 45-67, column 7, lines 1-25column 8, lines 25-45, column 9, lines 1-25, column 13, lines 30-45 and 59-67, column 14, lines 25-65, wherein the good is distributed from a stocking location to selling locations).

As per claim 37, Landvater teaches wherein the action includes allocating delivery of the item after ordering from a supplier (See figure 1, column 6, lines 45-67, column 8, lines 25-45, column 9, lines 1-25 and 55-67, column 13, lines 30-45 and 59-67, column 14, lines 25-65, wherein deliveries of goods from suppliers are allocated).

As per claim 40, Landvater teaches wherein simulating includes adding the presentation quantities and the projected demand requirements for the item at the selling locations (See column 8, lines 25-45, column 9, lines 1-25 and 55-67, column 10, lines 1-20, column 14, lines 25-65, column 15, lines 1-6 and 17-25, which discuss presentation quantities and demand requirements).

As per claims 41-44, Landvater teaches selecting the presentation quantity to be the average presentation quantity for the location during the predetermined selling period (See column 8, lines 25-45, column 9, lines 1-25 and 55-67, column 10, lines 1-20, column 14, lines 25-65, column 15, lines 1-6 and 17-25, which discuss presentation quantities).

As per claims 42-44, Landvater teaches wherein the approach selected uses:

a presentation quantity for the selling location on the first day of the predetermined selling period (See column 8, lines 25-45, column 9, lines 1-25 and 55-67, column 10, lines 1-20, column 14, lines 25-65, column 15, lines 1-6 and 17-25, which discuss presentation quantities).

a presentation quantity on the day of the predetermined selling period when the good is received at the selling location (See column 8, lines 25-45, column 9, lines 1-25 and 55-67, column 10, lines 1-20, column 14, lines 25-65, column 15, lines 1-6 and 17-25, which discuss presentation quantities).

the largest presentation quantity associated with the item at the selling location for any day of the predetermined selling period (See column 8, lines 25-45, column 9, lines 1-25 and 55-67, column 10, lines 1-20, column 14, lines 25-65, column 15, lines 1-6 and 17-25, which discuss presentation quantities at the maximum and minimum acceptable levels).

However, neither Landvater nor Display Unlimited expressly discloses selecting among a plurality of available approaches to calculating the presentation quantity.

Landvater discloses selecting a presentation quantity being selected in the system, the presentation quantity selected representing different values. Landvater further discloses calculating demand needs based on the presentation plan. It is old and well known in the art to provide user's with menus of choices from which the user can select a choice to be implemented by the software. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to include a menu for choosing an approach to select the type of presentation quantity value to use in order to more

accurately calculate the stock replenishments needed to maintain attractive displays by ensuring the capacity of the fixtures is accounted for. See column 14, lines 25-35 and 55-65 of Landvater.

As per claim 45, Landvater teaches wherein the simulating includes selecting the larger of the presentation quantities or the projected demand requirements for the item at the selling locations (See column 8, lines 25-45, column 9, lines 1-25 and 55-67, column 10, lines 20-50, column 14, lines 25-65, column 15, lines 1-6 and 17-25, which discuss presentation quantities at the maximum and minimum acceptable levels).

As per claim 46, Landvater teaches wherein the presentation quantity used is the presentation quantity for the selling location on the last day of the predetermined selling period (See column 8, lines 25-45, column 9, lines 1-25 and 55-67, column 10, lines 1-20, column 14, lines 25-65, column 15, lines 1-6 and 17-25, which discuss presentation quantities at the maximum and minimum acceptable levels).

Response to Argument

6.   Applicant's arguments with regards to the rejections based on Landvater (U.S. 6,609,101) and Display Unlimited (www.displayunlimited.com) have been fully considered, but they are not persuasive. In the remarks, Applicant argues that (1) the claim was used as a roadmap or blueprint to combine Landvater and Display Unlimited, (2) Display Unlimited does not qualify as a reference because it does not have any attributes of technology and does not provide an enabling disclosure, and examiner conceded that Display Unlimited does not teach or suggest designing an inventory program, (3) Landvater does not support a single reference 35 USC 103 rejection for

claim 93 and Landvater does not teach or suggest the display fixture data structures of

claim 93, (4) Unlike the current invention that accommodates different floor plans in a

retail chain, Landvater is limited to inventory for a particular configuration of facings,

without generalization across stores, (5) Landvater does not teach or suggest the

recording and selecting elements of claim 93, specifically breaking lead times into time

elements and composed in the software as collections of elements, (6) Landvater does not

teach or suggest allowing the item quantities to fall below the presentation quantity

between deliveries, (7) As per claims 27-29 and 31-34, Landvater does not teach time

elements or creating time element building blocks and combining the selected building

blocks to construct an overall lead time, (8) As per claim 37, Landvater does not teach

that the action includes allocating delivery of the item after ordering from a supplier, (9)

As per claim 40, Landvater is contradictory to conventional discrete event simulation

because fractional unit sales do not represent real world event and Landvater uses "safety

stock" unconventionally, and (10) Claims 41- 46 are not taught by Landvater.

In response to argument (1), Examiner respectfully disagrees. Applicant states

that "Examiner's form of argument is first to assert that every limitation of the claim is

met by Landvater, then to contradict herself by admitting at least some of what Landvater

lacks". Examiner respectfully requests applicant to reread the rejections set forth above.

Examiner clearly states that "Landvater does not expressly disclose specific display

fixture types or named display fixture types present at locations". This piece was never

asserted as taught by Landvater in the rejections set forth by the Examiner. Therefore,

examiner did not assert that everything is taught by Landvater and examiner is further

unclear as to what the Applicant is trying to establish by their assertions.

In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning (i.e. using the claim as a roadmap or blueprint to combine the references), it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

In response to argument (2), Examiner respectfully disagrees.

As to Applicant's assertion that Display Unlimited does not qualify as a reference because it does not have any attributes of technology, Examiner respectfully disagrees. Examiner points out that Display Unlimited is a Nonpatent Publication. All printed publications may be used as references as per MPEP 901.06. Further, as per MPEP 2128, an electronic publication, including an on-line database or Internet publication, is considered to be a "printed publication" within the meaning of 35 U.S.C. 102(a) and (b) provided the publication was accessible to persons concerned with the art to which the document relates. See *In re Wyer*, 655 F.2d 221, 227, 210 USPQ 790, 795 (CCPA 1981). Examiner is not clear where the MPEP states that a Nonpatent Publication is required to have attributes of technology. Therefore, examiner respectfully requests that the Applicant sites the specific sections of the MPEP that require a Nonpatent Publication to have attributes of technology in order to qualify as prior art.

As to Applicant's argument that Display Unlimited does not provide an enabling disclosure, Examiner also respectfully disagrees. As per MPEP 2121, Prior art is

presumed to be operable/enabled when the prior art relied on expressly anticipates or

makes obvious all of the elements of the claimed invention. Once such a reference is

found, the burden is on applicant to provide facts rebutting the presumption of

operability. *In re Sasse*, 629 F.2d 675, 207 USPQ 107 (CCPA 1980). Display Unlimited

was relied upon to teach different display fixture types used in retail environments and

using these fixture types to design layouts of stores in retail environments (See pages 2-3,

page 4, section 1, and page 5, section 1, which discloses fixture types and layouts of

stores with multiple elements). Display Unlimited specifically discloses a consulting

service that aids a retailer in designing and arranging displays and fixture types at his/her

sales location. Therefore, the art is enabled to show different types of fixtures and a third

party consulting service that aides retailers in arranging these fixtures in a sales location.

Applicant continues to mischaracterize the teachings of Display Unlimited and has not

provided sufficient facts rebutting that Display Unlimited discloses display fixtures and

consulting services.

Finally, examiner agrees that Display unlimited was not relied on to teach

designing an inventory program, but instead was relied upon to teach different display

fixture types and <u>using these fixture types to design layouts of stores in retail</u>

<u>environments</u> (See pages 2-3, page 4, section 1, and page 5, section 1, which discloses

fixture types and layouts of stores with multiple elements). Again, Display Unlimited

discloses a consulting service that aids a retailer in designing and arranging displays and

fixture types at his/her sales location. Landvater specifically stating that the shelf/display

configurations are stored in the database of the system in a way that shelf-planning

systems can be easily interfaced with aspects of the system. See column 14, lines 34-40.

Display Unlimited discloses types of displays used by retail stores. Thus the display

types of Display Unlimited would be able to be stored in the system of Landvater to

accomplish the same end result – establishing demand for products and product stocks

needed to support the display. The system of Landvater is mainly concerned with the

inventory needs of the display.

In response to argument (3), Examiner points out that a single reference 35 USC

103 rejection in view of solely Landvater was not relied on to reject claim 93. As set

forth above, claim 93 was rejected under 35 U.S.C. 103(a) as being unpatentable over

Landvater (U.S. 6,609,101) in view of Display Unlimited (www.displayunlimited.com).

Therefore, the argument that Landvater does not support a single reference 35 USC 103

for claim 93 is irrelevant based on the rejections set forth above.

As for Landvater teaching the display fixture data structures of claim 93,

Landvater in view of Display Unlimited was relied upon to teach this claim limitation.

Landvater teaches in at least figures 14 and 15, column 1, lines 40-50, column 2, lines 20-

27, column 14, lines 25-65, column 15, lines 1-6 and 17-25, that profiles of display setups

are stored in the system, the stored information including a display fixture and capacity

(i.e. shelf with specific space), wherein each instance of a display configuration is stored

in the database for planning purposes. Display Unlimited was relied upon to teach

different display fixture types and using these fixture types to design layouts of stores in

retail environments (See pages 2-3, page 4, section 1, and page 5, section 1, which

discloses fixture types and layouts of stores with multiple elements). Therefore, since

Landvater specifically states that the shelf/display configurations are stored in the

database of the system in a way that shelf-planning systems can be easily interfaced with

aspects of the system and since Display Unlimited discloses types of displays used by retail stores, the display types of Display Unlimited would be able to be stored in the system of Landvater to accomplish the same end result – establishing demand for products and product stocks needed to support the display.

In response to argument (4), Examiner respectfully disagrees. It is noted that the features upon which applicant relies (i.e., different floor plans per se) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Landvater expressly teaches a time-phased planning system using in a retail store supply chain with <u>one or more retail stores</u>. See specifically figure 1 and column 6, lines 45-67. Landvater specifically teaches a good at a plurality of selling locations/retail stores (See also column 9, lines 15-25 and 55-67, column 14, line 60-column 15, line 6). The system of Landvater is usable at all of these locations. Inventory is planned based on the displays required for particular displays. See column 14, lines 24-30, which specifically states that stock levels are calculated based on current and future arrangements of products on shelves of retail stores. Therefore, the shelves that are going to be used in the retail stores is used to plan across the stores and Landvater specifically stating that the shelf/display configurations are stored in the database of the system in a way that shelf-planning systems can be easily interfaced with aspects of the system. See column 14, lines 34-40. Display Unlimited was relied upon to teach different display fixture types and using these fixture types to design layouts of stores in retail environments (See pages 2-3, page 4, section 1, and page 5, section 1, which discloses

fixture types and layouts of stores with multiple elements). The display types of Display

Unlimited would be able to be stored in the system of Landvater for the reasons set forth

above in the rejections as well as discussed above with respect to argument (2).

In response to argument (5), Examiner respectfully disagrees. First, Landvater

does disclose *recording* in data structures the instances of display fixture setups that are

present at the selling locations. See column 14, lines 25-45, wherein display

configurations are expressly stored in the database of the system for use in inventory

planning and replenishment. Landvater further discloses *recording* presentation dates

during which the items are to be displayed in the named instances and presentation

quantities. See column 2, lines 20-27, column 14, lines 25-65, column 15, lines 1-6 and

17-25, wherein a good displayed on a shelf or on a floor display has a time of display and

quantities associated with the display that must be kept in inventory and on the display.

The shelf display and floor have dates associated therewith, and scheduled changes to

displays must be accounted for in the system. Next, Landvater discloses *recording* in

data structures time elements that are used collectively to represent the lead time for an

order **or** other action to lead to display of the items at the selling locations. See column

8, lines 25-40, column 9, lines 15-25 and 55-column 10, line 20, column 14, lines 25-45

and line 64-column 15, line 6 and 17-25, wherein time information associated with the

display is stored in the system database. Based on the needs of the display and safety

stock for the display, time-phased actions occur that incorporate the lead times needed to

fulfill the needed inventory. Different lead times associated with different shelf changes

are stored in the system as time elements. Therefore, the database of the system stores

time elements of lead time. These time elements can be selected to represent the lead

time when making time-phased decisions. Examiner notes that if in element 4 in the body of claim 93, if the time elements recorded are used to represent other actions, then the "selecting a plurality of time elements to represent the lead time" occurs a bit differently. Further, examiner notes that Display Unlimited was relied upon to disclose different display fixture types and using these fixture types to design layouts of stores in retail environments, as discussed above.

In response to argument (6), Examiner respectfully disagrees. Claim 26 recites "designating whether or not a quantity of the item at the selling location should be allowed to fall below the presentation quantity between deliveries". Therefore, it is not required by the claim that the quantity fall below the presentation quantity between deliveries, but rather that the system designates whether or not this is acceptable. In Landvater, a number is set for replenishment purposes so that an attractive display can be maintained. Based on this number, replenishments are planned so that an attractive display can be maintained. Therefore, Landvater teaches that the system designates that the presentation should be maintained at a certain level (and not fall below it).

In response to argument (7), Examiner respectfully disagrees. First, claims 27-29 and 31-34 discluss time elements that are recorded in the system. It is not required in the claim that these specific time elements be selected to form the overall lead time as claim 93 recites "recording [...] time element" and "selecting a plurality of the time elements to represent the lead time". Therefore, not all time elements stored are chosen to create a lead time. Further, claims 27, 29, 31, and 33 all independently depend from claim 93, and therefore do not interrelate and/or all exist in any specific scope of the claimed invention based on their dependency.

Landvater teaches a time-phased planning system using in a retail store supply

chain. See specifically figure 1 and column 6, lines 45-67. Landvater specifically

teaches associating time elements in the time-phased planning system with a good at a

plurality of selling locations (See also column 9, lines 15-25 and 55-67, column 14, line

60-column 15, line 6). The time elements of the time-phased planning system include

time to collect data, review action recommendations, process data, pick goods, and ship

goods to the selling location (See column 3, lines 10-30, column 8, lines 25-45, column 9,

lines 1-25, column 14, lines 60-67, column 16, lines 35-65). Therefore, as per claim 27,

Landvater does disclose time to deliver the item from the stocking location (i.e. from the

manufacturer to the retailer). See additionally column 13, lines 30-45 and 59-67. These

delivered items are prepared for sale by setting up the display of the delivered good. As

per claim 29, Landvater disclosed wherein the time elements include time required to

collect data, review action recommendations, process data, pick goods at a stocking

location, and ship the item to the selling location, as cited above. Data must be collected

concerning current inventory at the retail location, forecasts must be generated through

data processing, goods must be requested from manufacturers, and then delivered to the

retail store. As per claims 31-4, Landvater expressly teaches using the planning system

in a retail store supply chain with one or more retail stores (first level), one or more

suppliers (second level) and one or more manufacturers. See specifically figure 1 and

column 6, lines 45-67. Landvater therefore discloses wherein the time elements include

time of distributing the good from one or more first level stocking locations to a plurality

of second level stocking locations. See also column 3, lines 10-30, column 7, lines 1-25,

column 8, lines 25-45, column 9, lines 1-25 and 55-67.

In response to argument (8), Examiner respectfully disagrees. Landvater expressly teaches a planning system using in a retail store supply chain with <u>one or more retail stores</u> (first level), <u>one or more suppliers</u> (second level) and <u>one or more manufacturers</u>. See specifically figure 1 and column 6, lines 45-67. Landvater specifically states that dates are assigned when the ordered items will be delivered by the suppliers. See column 8, lines 25-45, column 9, lines 1-25 and 55-67, column 13, lines 30-45 and 59-67, column 14, lines 25-65, wherein deliveries of goods from suppliers are allocated/assigned.

In response to argument (9), Examiner notes that Applicant strongly relies on disclosure in the specification when arguing claim 40. It is noted that the features upon which applicant relies (i.e., conventional discrete event simulation) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). Claim 40 recites "wherein the simulating includes adding the presentation quantities and the projected demand requirements for the item at the selling locations". Thus, there is no specific recitation of discrete event simulation as opposed to another type of simulation. Examiner notes that in the broadest reasonable interpretation, Simulation requires making a model and then changing some value to determine the change in the model. Landvater discloses wherein sales are forecasted and modeled for a selling period to determine inventory and safety stock considerations, as well as replenishments, based on the expected sales. As the expected sales change, the forecasts change. See column 8, lines 19-35, column 9, lines 50-62, column 10, lines 1-2 and 30-55, column 12, lines 10-30 and 40-55. Finally, examiner

does not agree with Applicant that Landvater uses the term "safety stock"

unconventionally. Landvater states that "the concepts of safety stock and safety time

have been part of the prior art for some time" in column 3, lines 35-36. Safety stock is

used by Landvater as stock that is held in inventory to assure that the product of the

display does not go out of stock.

In response to argument (10), Examiner respectfully disagrees. Landvater

discusses the amount of goods needs to create and maintain the presentation required by

the retail store(s). Landvater considers all of the following: what is projected to be sold,

what is projected to be shipped, stock levels based on current and future arrangement of

products in displays, required safety stock levels, etc. See column 8, lines 25-45, column

10, lines 1-20, column 14, lines 25-65, column 15, lines 1-6 and 17-25. Thus, the

standard, regular (i.e. average) presentation quantity for the location during the

predetermined selling period is considered in the replenishment calculations by

considering the required products for the display (based on shelf configurations stored the

database) and the required safety stock. The system plans for the current presentation

quantity needed to set up the display (and thus is also what is needed on the first day of

selling the good). See also column 3, lines 10-25. Again, as per claim 43, the

presentation quantity used for replenishment planning is the quantity needed for display

setup and sales and thus is the total number that needs to be on hand when the good is

received at the selling location. The goods have set presentation quantities in the system

that are required (as well as required safety stock levels), and thus when combined to plan

replenishments, this value is the largest quantity associated with the good. As per claim

45, Landvater discusses that projected demand is considered when planning

replenishment quantities. Thus, projected demand is considered against the presentation

quantities and requisite safety stock. Finally, Landvater teaches wherein the presentation

quantity used in the roll up is the presentation quantity for the selling location on the last

day of the predetermined selling period. Future changes in presentation are considered

based on the future date that the change occurs. This "change date" is considered in the

system, and thus the last day when the current configuration quantity is needed is also

known. As per claim 46, Landvater teaches dates associated with the display being

presented at the retail location(s) and where presentation quantities are expected at a

maximum and minimum acceptable levels. See column 8, lines 25-45, column 9, lines 1-

25 and 55-67, column 10, lines 1-20, column 14, lines 25-65, column 15, lines 1-6 and

17-25, wherein the last day associated with the display still has maximum and minimum

acceptable levels associated therewith.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of

time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE

MONTHS from the mailing date of this action. In the event a first reply is filed within

TWO MONTHS of the mailing date of this final action and the advisory action is not

mailed until after the end of the THREE-MONTH shortened statutory period, then the

shortened statutory period will expire on the date the advisory action is mailed, and any

extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the

advisory action. In no event, however, will the statutory period for reply expire later than

SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the

examiner should be directed to Beth Van Doren whose telephone number is 571-272-

6737. The examiner can normally be reached on M-F, 8:00-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's

supervisor, Tariq Hafiz can be reached on 571-272-6729. The fax phone number for the

organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the

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have questions on access to the Private PAIR system, contact the Electronic Business

Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO

Customer Service Representative or access to the automated information system, call

800-786-9199 (IN USA OR CANADA) or 571-272-1000.

bvd
October 9, 2007

BETH VAN DOREN
PRIMARY EXAMINER
AU 3623